

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Allied Cab/James Marlow)
Personal Property Account Number P-134723) Davidson County
Tax Year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

On December 13, 2007, the State Board of Equalization ("State Board") received the above-styled appeal by James Marlow; owner of the 2000 Dodge Caravan used in transacting business with the Allied Cab Company.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. The undersigned administrative judge conducted a jurisdictional hearing relative to this matter on January 17, 2008, in Nashville, Davidson County, Tennessee. Present at the hearing was Debra Marlow wife of taxpayer James Marlow¹, Kenny Venson, from the Davidson County Assessor's Office; and Attorney Jenny Hayes from the Metropolitan Legal Department.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Allied Cab is a commercial business located at 1510 Lebanon Road, a location in Nashville and Davidson County. According to the tax records, the business was opened in 2007.

The threshold issue to be decided in this case is whether or not the State Board of Equalization has the jurisdiction to hear this taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted, if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

The taxpayer shall have a right to a hearing and determination to show **reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

¹ The taxpayer is currently in Afghanistan, according to Mrs. Marlow her husband is a civilian employee for the U.S. Military, she did not specify which branch nor did she produce any documentation.

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Additionally, an Attorney General's Opinion² and numerous decisions has thoroughly discussed and espoused the primary principles by which any analysis of jurisdictional issues are conducted. Thus for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

Generally, except in the event of insufficient notice of a change in classification and/or valuation, a property assessment which is not appealed to the county board of equalization during its regular annual session becomes final. See T.C.A. §§ 67-5-1401 and 67-5-1412(b). In 1991, the General Assembly amended the law by affording a taxpayer the opportunity for a hearing before the State Board to demonstrate "reasonable cause" for failure to appeal the property in question to the county board of equalization (or for failure to appeal to the State Board in a timely manner).

During the Court hearing Mrs. Marlow stated that she believed the 2000 Dodge van was over assessed and could not possibly be worth what the County had assessed. I reminded Mrs. Marlow that before we could discuss the value of the van, jurisdiction had to be established.

Mrs. Marlow further stated that her husband came home in December of 2007 and tried to address this matter but was unable to get any assistance. He has since returned to Afghanistan and is currently there. Mrs. Marlow was unsure as to when the tour of duty would be over.

In writing this Order a review and perusal of the Service members Civil Relief Act (50 USC App §§501-593)³ was performed because the taxpayers status under that Act could have been dispositive of this appeal for certainly as Judge Mark Minsky so eloquently stated, 'surely the government would extend to civilians who are risking their lives in service of our country under war time conditions the same protection afforded other

² Written October 8, 1992, at 92-62 by Office of the Attorney General

³ Formerly called The Soldiers' and Sailors' Civil Relief Act of 1940

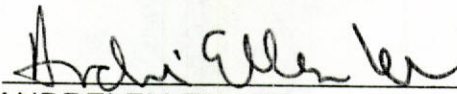
service members'. However, while an examination of the Act did not yield dispositive answers, the fact that the taxpayer was out of the country does show that circumstances beyond his [taxpayers] control.

The fact that this taxpayer was and still is in Afghanistan is "reasonable cause" ⁴, in this administrative judges' opinion, for his failure to follow the law regarding going before the County Board of Equalization therefore; he has met his burden of proof⁵ and the State Board of Equalization does have jurisdiction to hear this appeal.

ORDER

It is, therefore, ORDERED that this appeal shall be set for further hearing on the issue of value.

ENTERED this 13th day of March, 2008.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: James & Debra Marlow
Jenny Hayes, Esq.
Jo Ann North, Assessor of Property

⁴ Reasonable cause has loosely been defined as circumstances beyond the control of the taxpayer. (citations omitted).

⁵ Rules of the State Board of Equalization, Rule 0600-1-.11(1)